

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAKIBA MONTAÑEZ-ORTIZ,

Defendant.

Criminal No. 13-068 (JAF)

MEMORANDUM ORDER

Federal Rule of Criminal Procedure 17 governs the issuance and use of court subpoenas in criminal cases. For purposes of this Memorandum Order, we highlight two different Rule 17 subpoenas contemplated by the Rule:

1) A Fed. R. Crim. P. 17(a) subpoena to testify at a hearing or trial in a criminal case.

2) A Fed. R. Crim. P. 17(c)(1) subpoena to produce documents or objects.

A Rule 17(a) subpoena orders a witness to appear at a United States district court on the time, date, and place shown on the subpoena to testify in a criminal case or criminal hearing. A Rule 17(c)(1) subpoena may direct a witness to produce the designated material in court before trial or before it is offered in evidence. When the items arrive, the court may allow the parties or attorneys to inspect all or part of the material produced.

The use of Rule 17 subpoenas is strictly regulated to avoid misuse, and to protect third-party rights. No one, party or counsel, is allowed to loosely utilize a Rule 17(a) subpoena for any purpose other than for trial or hearings. Both Rule 17(a) and 17(c)(1) subpoenas have a specific use and purpose, and they cannot be used indistinctively. The

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1 subpoena power is ominous, and such forceful instrument must be utilized in strict
2 compliance with the rule.

3 On various occasions in the past, the court has unauthorized the improper use of Rule
4 17 subpoenas. See United States v. Candelario-Santana, No. 3:09-cr-00427-JAF, U.S. Dist.
5 2013 WL ___, Doc. 834 (D.P.R. Feb. 07, 2013); United States v. Santiago-Lugo, 904
6 F.Supp. 43 (D.PR 1995).

7 In this case, we have discovered one more instance of the improper use of a trial
8 subpoena to obtain records and documents. Unfortunately, in this case the failure to
9 observe the strictures of the rule falls on a regular criminal litigator, the Office of the
10 Federal Public Defender.

11 On March 19, 2013, AFPD Diego Alcalá-Laboy caused the issuance of a Rule 17(a)
12 subpoena to obtain documents from the Police of Puerto Rico in contravention of Rule
13 17(c)(1). See Attachment #1. The subpoena commanded a Lieutenant of the Puerto Rico
14 Police Department to appear to testify at a hearing or trial in a criminal case, bringing
15 documents, on March 25, 2013, Courtroom No. 7, before the undersigned. There was no
16 trial or adversary hearing scheduled in this case for that date and time. Obviously, the
17 improper use of the Rule 17(a)-type subpoena appears to be only negligent and not
18 intentional, since the police officer was instructed by AFPD Alcalá-Laboy over the
19 telephone to deliver the documents to the court.

20 We attach to this order a model of a subpoena duces tecum under Fed. R. Crim.
21 P. 17(c)(1) that is readily available from the legal publications of federal forms edited by
22 Matthew Bender & Co., Inc. See Attachment #2. If compared to AO Form 89 (trial
23 subpoena used by the AFPD), the difference is obvious.

